1942

File No O District Police/42

Legal Department

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Subject:— Opinions under the Bombay District Police Act 1890

P-15

File No. O District Police/42

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Action of the R.L.A.

The question for R.L.A's consideration is whether it is competent or legal for the District Magistrate to deduct the amount received by the claimants from Insurance Companies on account of riot insurance, from the amount of compensation to be paid to such claimants under section 25-A of the Bombay District Police Act, 1890

2. Sub-clause (i) of clause (a) of sub-section (1) of section 25-A, of the Bombay District Police Act, 1890, provides that with the previous sanction of the Commissioner, the Magistrate of the district may, after such enquiry as he deems necessary, determine the amount of compensation which, in his opinion, should be paid to any person or persons in respect of loss or damage caused to any person or persons by anything done in the prosecution of the common object of an unlawful assembly. "Damages are the recompense given by process of law for the wrong that another has done him" (page 82, Halsbury's Laws of England, Vol.X 2nd Edn.). The term 'compensation' is not ordinarily used as an equivalent for damages. It is practically synonymous with "Statutory damages" (page 8 of Arnold on Damages and Compensation, 2nd Edn.). The term "Statutory damages" means inter alia the remedy in damages provided by some particular statute under which the action is brought (page 87 of Halsbury's Laws of England, Vol.X, 2nd Edn.). Under section 25-A of the Bombay District Police Act, the District Magistrate has to determine the amount of compensation which in his opinion should be paid to sufferers in riots in respect of loss or damage caused to their property. Damages are usually assessed on the principle of 'restitutio in integrum'. In assessing the amount of compensation to be paid under section 25-A, the District Magistrate has to determine the extent of the actual damages ~~or compensation~~ sustained by the claimant in consequence of the riots. The principle that governs such assessment is that any damage or compensation claimed must flow or arise, as a natural consequence of the wrongful acts done by the rioters and should not be remote. (cf. page 10 of Arnolds on Damages & Compensation, 2nd Edn.). The compensation to be paid to the claimant under section 25-A, is in respect of the loss or damage.

FRS 22/18

caused and the District Magistrate cannot fix different amount of compensation for similar damage to neighbouring properties on the ground that one is insured and has received some amount from the Insurance Company while the other is not. The Compensation is to be assessed on the loss or damage caused to properties by rioters. The loss or damage caused by rioters is not in any way minimised by the fact that a certain property is insured and the insurer may [illegible] amount of insurance indemnify the assured partly or wholly for such loss. Consequently while determining the amount of compensation, the District Magistrate should not deduct the amount recovered by the claimants from Insurance Companies. The Fire Insurance is a contract of indemnity and the doctrine of 'subrogation' applies to a fire policy. "Subrogation" in the strict sense of the term, expresses the right of the insurance to enforce for their own benefit all the rights, liabilities and remedies which the assured possesses against third parties in respect of the subject-matter (page 467-468 of Halsbury's Laws of England, Vol.18 - 2nd Edn.) Subrogation even applies to statutory liability (see para. 693 at page 468 ibid.). Under the English law, viz. Section 2(2) of the Riot (Damages) Act, 1886 (49 & 50 Vict. c.38) the insurers on payment of a loss caused by riot, are subrogated to their insured's right to the statutory compensation. (See note (e) at page 468 ibid.). There is no express provision to this effect in the Bombay District Police Act, 1890, but the position will be the same in view of the well recognised legal principles. The cases of Yates vs. Whyte, 4 Bingham New Cases or Mason vs. Sainsbury 3 Douglas Report 60, referred to by the Fire Office Committee, London, are not available. The amount of the compensation to be awarded in respect of the damage due to the riots cannot be diminished by a matter completely collateral and amounting to res inter alios acta such as insurance. The principle enunciated in the case of Yates vs. Whyte seems to be applicable to the present case. "... where the defendant was sued for injuring the Plaintiff's ship, or the Plaintiff himself by negligence, he could not obtain a reduction of damages on the ground that the Plaintiff had recovered from the insurers. This

would be to allow the wrongdoer to pay nothing, and take all the benefit of a policy of insurance without paying the premium." (Page 134 of Mayne on damages - 8th Edn.). The general rule of law is that when there is a contract of indemnity (it matters not whether it is a marine policy, or a policy against fire on land, or any other contract of indemnity) and a loss happens, anything which reduces or diminishes that loss, reduces or diminishes the loss comes into the hands of the person to whom he has paid it, it becomes an equity that the person who has already paid the full indemnity is entitled to be recouped by having that amount back (Burnand v. Rodocanachi, 1882, 7 A.C. 333 at 339; Darnells law of Insurance in British India, p.76). A policy of fire insurance is a contract of indemnity and upon payment of the amount of loss the insurer is entitled to be put into the place of the assured; and if at a subsequent time the assured receives compensation from other sources for the loss sustained by him, the insurer is entitled to recover from the assured any sum which he may have received in excess of the loss sustained by him, (Darrell v. Tibbits 1880, 5 C.P.D.560, Empire Digest Vol.29, p.53). In the present case it is true that there is no personal liability on any particular individual to pay the compensation as a defendant but this is a Statutory liability and the same principles would apply. The procedure followed by the Chief Presidency Magistrate in respect of similar claims under the section 45 of the City of Bombay Police Act, 1902, appears to be correct. The orders of the District Magistrate, Ahmedabad, in deducting the amount recovered from insurance companies appear to be unjustified and as they are under revision to the Commissioner, Northern Division, under section 25-A, (4) of the Bombay District Police Act, the Commissioner may revise them.

amount which the indemnifier is bound to pay and if the indemnifier has already paid it, then if anything which diminishes the

Sd/- P.J.P.
16/2

Remembrancer of Legal Affairs.

U.O. to D.D. No.1467, dated the 15th February 1942.

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Statement of the case for opinion of the Advocate General.

Pp.239-240 ante.

1. With the previous sanction of the Commissioner, Northern Division, the District Magistrate, Ahmedabad, passed an order on 14/20-11-1941 under section 25A (1)(a)(ii), (c) and (d) of the Bombay District Police Act, 1890, requesting the President, Ahmedabad Municipality, to assess and recover the amount of Rs.17,30,827 on account of compensation in respect of loss or damage by imposing and levying a rate equal to 1½ times the actual demand of the Municipal general rate for the year 1941-42 from each person liable to pay such water-rate, and to apportion the money so recovered to persons or the heirs of the persons entitled to compensation. The Ahmedabad Municipality by its resolution No.1433, dated 17-12-1941 refused to recover the amount stated in the requisition issued by the District Magistrate, Ahmedabad. Further correspondence failed and the Municipality adhered to its attitude of not being a party to the recovery of the riot-tax. Consequently, it is necessary for Government to consider what methods should be employed by Government against the Ahmedabad Municipality to enforce the collection of the riot compensation.

Pp.235-236 ante.

Pp.271-275 ante.

2. The L.A.G. in his opinion No.26-B-Confl, dated the 11-6-1941 pointed out that there were two methods provided in law for

Vide slip B below.

recovery of the amount of compensation. The first was that provided in proviso to sub section (1) of section 26 of the Bombay District Police Act, 1890, under which, in the case of a Municipality making default, the Provincial Government could direct the Collector to impose the tax or assess thereat or to make the recovery of such amount. The second remedy open to Government was to take action against the Municipality under section 218 of the Bombay Municipal Boroughs Act, 1925. (See also P.L.A.'s opinion No.493, dated the 31-1-1931)

* P.11 of L.D. file O. Munis.Dist/1931 Slip

3. The Commissioner, S.D., however, doubts whether in view of the definite provision in the proviso to section 26(1) of the Bombay District Police Act,1890, it would be proper to proceed under section 218 of the Bombay Municipal Boroughs Act, 1925, for recoveries to be made under the provisions of the Bombay District Police Act, 1890.

Vide p.321 Ante

4. The view taken by the Commissioner appears to be based on the dictum that "If the statute which creates the obligation, whether private or public, provides in the same section or passage a specific means or procedure for enforcing it, no other method than that thus provided can be resorted to for that purpose". (pp.339-340 of Maxwell on Interpretation of Statutes.) But it seems to me that the correct principle applicable in the present instance is that when two alternative

remedies are available, it is open to Government to resort to either of them. The Bombay District Police Act, 1890, and the Bombay Municipal Boroughs Act, 1925, cannot be regarded as special and general Acts with reference to each other and consequently the principle that the special recovery provided in the Special Act would exclude the use of the general recovery provided in the general Act will have no application. There is nothing in the proviso to section 26(1) to suggest that the remedy provided therein is the sole remedy or that all other remedies, if otherwise available, are by this provision barred or superseded. Consequently, it appears equally competent for the Provincial Government at its option to take action either under the proviso to section 26(1) of the Bombay District Police Act, 1890 or under section 218 of the Bombay Municipal Boroughs Act, 1925, in case of default of the Municipality to recover the riot compensation.

5. As however the question is of considerable importance and it is quite likely that the Ahmedabad Municipality may take the matter to a Court of law, the Advocate General is requested to be so good as to give his opinion on the question whether it is competent for Government to resort to section 218 of the Bombay Municipal Boroughs Act, 1925, in the event of default of the Municipality to recover the amount of compensation under

section 26(1) of the Bombay District Police
Act, 1890.

sd/- P.N.M,
Remembrancer of Legal Affairs.

U.P. to Advocate General, No.2643, dated
the 31-t March 1942.

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The only question raised is whether having regard to the express provision in the Proviso to section 26(1) of Bombay Act IV of 1890, enabling the Provincial Government to take certain steps in the case of a Municipality making defaults therein mentioned, it is competent to the Provincial Government to take steps in the case of a default dealt with by the Proviso to section 26(1) not under that proviso but under the general provisions of section 218 of Bombay Act XVIII of 1925.

2. I agree with the view of the R.L.A. expressed towards the end of paragraph 4 of his Note that it is at the option of the Provincial Government to take action either under the proviso to section 26(1) of Act IV of 1890 or under section 218 of Act XVIII of 1925.

3. There is nothing in the terms of section 26(1) of Act IV of 1890 which has the effect of restricting the action that the Government might take in the case of a default to the action mentioned in the Proviso to that section. Section 218 of Act XVIII of 1925 expressly deals with a default by the Municipality made in the performance of any duty imposed on a Municipality by or under that Act or "by or under any enactment for the time being in force". The effect therefore of these two sections is to provide the Provincial Government in the case of a default, such as we have in the present case, with two alternative remedies. They may take action either under the proviso to section 26(1) of Act IV of 1890 or under section 218 of Act XVIII of 1925.

4. The Principle mentioned in paragraph 4 of the Note of the R.L.A. and referred to in Maxwell on Statutes at pp 339-340 has no application. That principle deals with remedies available to parties in a Court of Law. If a special Act which creates the obligation, itself provides a procedure for enforcing it then the law assumes, nothing further being said, that that is the only procedure which the person aggrieved can resort to for the purpose of enforcing the obligation. In other words, in such cases the

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A copy of the Advocate General's opinion dated the 4th April 1942 along with a copy of the statement of the case is sent herewith.

sd/- P.N.M.
7/4

Remembrancer of Legal Affairs.

U.O. to H.D. No.3037 dated the 8th April 1942

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jurisdiction of the Courts could be said to be impliedly barred except to the extent provided for by the special Act. See 31 Bom. 604 and the other cases referred to in Mulla's Civil Procedure Code under section 9 under the heading "suits impliedly barred". This principle would have no application here, in as much as, there is no question of resort being had to a Court of Law for enforcing an obligation.

9. The more important reason however why the principle above mentioned has no application is that in the present case we have two Acts expressly giving liberty to the Provincial Government to deal with the matter. In this connection, the words in section 218 of Act XVIII of 1925 expressly referring to "defaults in the performance of duties imposed on the Municipality by any other enactment for the time being in force are important. The position therefore is that for every default in respect of a duty imposed on a Municipality by any enactment for the time being in force, the Government will have two alternative remedies. The first would be the remedy, if any, provided by the Act imposing the duty. The second would be the remedy provided by section 218 of Act XVIII of 1925. The principle above mentioned can have no application to cases where two Acts give two distinct remedies, the one confined to a particular default and the other a general one extending to all defaults including the one under the special Act.

sd/-

Advocate General.

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Office of the P.L.A.

The proposal in this case is that the Ahmedabad City Mahal, now included in the Ahmedabad District should be in the charge of a District Superintendent of Police and that the rest of the area of the Ahmedabad District should be in the charge of an independent District Superintendent of Police. The question for consideration is whether the proposal is legally feasible. Under section 6(1) of the Bombay District Police Act, the Provincial Government can appoint only one District Superintendent of Police for each district. In section 2(d) "district" is defined to mean a territorial division constituting a district for the purpose of the Code of Criminal Procedure, 1898. The word, however, is not defined in the Code, nor in the General Clauses Act, 1897. Under section 7(1) of the Criminal Procedure Code, every sessions division consists of one or more districts, and section 10(1) provides that in every district outside the Presidency-towns, the Provincial Government shall appoint the Magistrate of the First Class who shall be called the District Magistrate. It is clear therefore that the word "district" is used in the sense of a district for the purposes of criminal administration - not necessarily co-extensive, with a revenue district, though that is the normal condition - in charge of a District Magistrate (see in re Arasuga Salagan I.L.R. 54 Mad. 943). In order to give effect to the proposal each of the two areas will have to be constituted a district; but the two districts can continue to be included in the present Sessions Division of Ahmedabad, the Provincial Government appoint a District Magistrate for each of the or perhaps one officer as District Magistrate for both districts (See 54 Mad. 943) under section 10(1). The proposal thus involves administrative alteration and the H.D. may consider whether it would not be more convenient to accept the simpler expedient of continuing the present Ahmedabad district as a single district, but apportioning, for administrative purposes, distinct areas between the District Superintendent of Police and the Additional District Superintendent of Police.

sd/- P.N.N.
Remembrancer of Legal Affairs.

sm/1-8 H.D. to H.D.No.9662, dated the 17th Nov.1942.